Overnite Transportation Company *and* International Brotherhood of Teamsters, AFL–CIO, on behalf of Teamsters Local Union Nos. 89, 299, 375, and 651. Case 18–CA–15496

March 8, 2001

DECISION AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS LIEBMAN AND HURTGEN

Pursuant to a charge filed on January 10, 2000, by International Brotherhood of Teamsters, AFL–CIO (the International) on behalf of Teamsters Local Union Nos. 89, 299, 375, and 651 (the Unions), the General Counsel of the National Labor Relations Board issued a complaint on February 2, 2000, alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Unions' requests to bargain following the Unions' certifications in Cases 7–RC–20512, 26–RC–7720, 9–RC–16504, 3–RC–10453. (Official notice is taken of the "record" in the representation proceedings as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).)[1] The Respondent filed an answer admitting in part and denying in part the allegations in the complaint.

On March 7, 2000, the General Counsel filed a Motion for Summary Judgment. On March 9, 2000, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a document entitled "Opposition to General Counsel's Motion for Summary Judgment, Response to National Labor Relations Board's Notice to Show Cause, and Motion to Reopen the Record, Remand for Hearing on Teamster Violence and Intimidation and Consolidate with Pending Section 8(b)(1)(A) Cases." The General Counsel filed an opposition, and the Respondent filed a reply.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In its answer to the complaint, the Respondent denies that it has refused to recognize and bargain with the Unions, attacks the appropriateness of the bargaining units, and denies that the Unions are the certified exclusive bargaining representatives of the unit employees.[2]

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941).

In its opposition to the Motion for Summary Judgment, the Respondent states that on October 24, 1999, after the Board certified the Unions as bargaining representatives, the International called a nationwide strike to protest the Respondent's alleged unfair labor practices, including the refusal to bargain with the four certified Unions. The Respondent claims that the strike, which has been "orchestrated, overseen and directed" by the International, "has been plagued with serious, premeditated violence and other intimidation." The Respondent's evidence of strike misconduct is summarized in its submission. According to the Respondent, violence and related intimidation have occurred at numerous service centers, including the four where the Unions were certified as bargaining

[1] Member Hurtgen dissented from the Decision, Order, and Certification of Representative in the underlying representation proceedings in Case 7–RC–20512, reported at 328 NLRB 1231 (1999), and in Case 9–RC–16504, based on his dissent in *Randell Warehouse of Arizona*, 328 NLRB 1034 (1999).

[2] The Respondent denies the complaint allegations that on July 30 and August 2, 11, and 19, 1999, the Unions requested bargaining in the Tonawanda, New York, Bowling Green, Kentucky, Lexington, Kentucky, and Romulus, Michigan bargaining units, respectively, and that on those dates it failed and refused to recognize and bargain with the Unions in each of the respective bargaining units.

The General Counsel has attached as an exhibit to his Motion for Summary Judgment a copy of a December 16, 1999 letter sent by the International to the Respondent's attorney in which the International clarifies the facilities on whose behalf the Teamsters' Coordinated Bargaining Committee is authorized to bargain, and states that the International's demand to bargain as stated in its letter of December 2, 1999, covers each of the named facilities. In addition, the General Counsel has also attached as an exhibit to his Motion for Summary Judgment a copy of a December 17, 1999 letter sent from the Respondent's attorney to the International stating that the Respondent "is contesting certifications for the Detroit, Bowling Green, Buffalo and Lexington Service Centers." Further, in his Motion for Summary Judgment, the General Counsel refers to these letters and indicates that with respect to each of the units at issue, "particularly since December 16, 1999," the Unions requested recognition and bargaining, and that "particularly since December 17, 1999," the Respondent refused. In its response to the Notice to Show Cause, the Respondent has not contested the authenticity of these documents, or challenged their veracity. Accordingly, we find that the Respondent's denials raise no material issue of fact warranting a hearing.

Further, we note that in its answer to the complaint, the Respondent admits it has maintained offices and places of business at locations throughout the United States, including "Detroit (Romulus), Michigan; Bowling Green, Kentucky; Lexington, Kentucky; and Buffalo (Tonawanda), New York." We conclude, therefore, that the International's reference in its letter of December 16, 1999, to the Respondent's facilities in "Detroit, Michigan" and "Buffalo, New York," refer to the facilities discussed here as the "Romulus, Michigan" and the "Tonawanda, New York" facilities.

representatives. In addition, the Respondent argues that, as a result of the highly integrated nature of its trucking operations, employees in the bargaining units have learned of strike-related misconduct occurring at other service centers.

Citing *Laura Modes Co.*, 144 NLRB 1592 (1963), and its progeny, the Respondent contends that "the Teamsters' campaign of violence and intimidation should vitiate the certifications previously issued at the four locations involved here." The Respondent argues that, under the Board's rules, it is entitled to a hearing to prove "Teamster misconduct and its coercive impact on employees." Specifically, the Respondent moves to reopen the record, to remand for hearing, and to consolidate the instant proceeding with any cases in which the General Counsel has issued complaints alleging that the strike misconduct violated Section 8(b)(1)(A) of the Act.

The General Counsel opposes the Respondent's motion on two grounds. First, the General Counsel contends that the Respondent has not presented sufficient evidence to warrant the relief it seeks. Second, the General Counsel argues that the Respondent has selected an inappropriate forum: In the General Counsel's view, the strike misconduct issue should be examined in the pending 8(b)(1)(A) cases, not in the instant refusal-to-bargain case.

For the purpose of ruling on the Respondent's motion, we will accept as true the Respondent's allegations of strike-related misconduct, and we will assume arguendo that the Respondent is correct that the International has orchestrated, overseen and directed the strike, and is responsible for many of the violent incidents that are alleged to have occurred.[3] Nevertheless, after careful consideration, we have decided to deny the Respondent's motion for the following reasons.

In *Laura Modes*, supra, the seminal case in this area, the Board found that the company violated Section 8(a)(5) of the Act by refusing to recognize the union. 144 NLRB at 1595. The Board, however, declined "to give [the union] the benefit of our normal affirmative bargaining order" because the union "evidenced a total disinterest in enforcing its representation rights through the peaceful legal process provided by the Act in that it resorted to and/or encouraged the use of violent tactics to compel their grant." Id. at 1596.[4]

As the Respondent acknowledges in its reply brief, "*Laura Modes* relief is not routine." Indeed, the Board has characterized the withholding of an otherwise appropriate remedial bargaining order as an "extraordinary sanction." *New Fairview Hall Convalescent Home*, 206 NLRB 688, 689 (1973), enfd. 520 F.2d 1316 (2d Cir. 1975), cert. denied 423 U.S. 1053 (1976).

In applying the principles of *Laura Modes* here, it is important to bear in mind that while the Respondent's motion emphasizes the responsibility of the International for the nationwide strike, the International would not be the beneficiary of any bargaining order issued in this proceeding because it is not the certified representative of the bargaining unit employees. Rather, the Board certified four different Locals as the exclusive bargaining representatives of the employees employed at the Respondent's facilities in Romulus, Michigan; Bowling Green, Kentucky; Lexington, Kentucky; and Tonawanda, New York. Furthermore, although the Locals share a common affiliation with the International, the four Locals and the International are each separate and distinct labor organizations within the meaning of Section 2(5) of the Act. Therefore, even assuming that all of the strike misconduct allegedly engaged in at all of the various locations cited by the Respondent can be attributed to the International, that misconduct is relevant to the Respondent's *Laura Modes* defense only if, by virtue of an agency relationship, the conduct can also be attributed to the Locals. There is no basis for finding, and the Respondent has not argued, that each of the Locals is an agent of every other local, such that each Local's conduct can be attributed to every other Local. Thus, the only conceivable basis for attributing all of the conduct to any of the certified Locals would be a finding that the International is an agent of each one of them.

Accordingly, we turn to consider principles of agency law. It is well established that, under Section 2(13) of the Act, employers and unions are responsible for the acts of their agents in accordance with ordinary common-

[3] We emphasize that we make these assumptions solely for the purpose of ruling on the Respondent's motion. The legality of the alleged misconduct and liability therefore is a matter to be decided in the context of the pending 8(b)(1)(A) cases. We express no view about the merits of any charge and complaint allegations of strike-related misconduct by the International and the Unions.

[4] Our dissenting colleagues relies on *Westwood Horizons Hotel*, 270 NLRB 802 (1984); *Utica-Herbrand Tool Div. of Kelsey-Hayes Co*., 145 NLRB 1717 (1964); and *Myrna Mills*, 133 NLRB 767 (1961). These cases are distinguishable. They presented the issue of whether the conduct of third parties was so aggravated as to create a general atmosphere of fear and reprisal warranting the setting aside of a Board election. By contrast, in the instant case, fair elections have been held, the Locals have been duly certified, and the question before us is whether they engaged in subsequent conduct which "evidenced a total disinterest in enforcing [their] representation rights through the peaceful legal process provided by the Act." *Laura Modes*, supra, 144 NLRB at 1596. Clearly, the *Laura Modes* standard for denying a bargaining order is considerably higher than the "atmosphere of fear and reprisal" standard for setting aside an election. Furthermore, we know of no case (and our dissenting colleagues cites none) where the Board has denied the union an otherwise appropriate bargaining order under *Laura Modes* because of misconduct committed not by the union, but by a third party.

law rules of agency. *Longshoremen Local 1814 ILA v. NLRB*, 735 F.2d 1384, 1394 (D.C. Cir. 1984) ("Beyond doubt, the legislative intent of [Section 2(13)] was to make the ordinary law of agency applicable to the attribution of individual acts to both employers and unions."). And, under "hornbook agency law[,] . . . an agency relationship arises only where the principal 'has the right to control the conduct of the agent with respect to matters entrusted to him.'" *Longshoremen ILA v. NLRB*, 56 F.3d 205, 213 (D.C. Cir. 1995) (quoting Restatement (Second) of Agency Sec. 14 (1958); accord: *NLRB v. Sheet Metal Workers, Local 19*, 154 F.3d 137, 142 (3d Cir. 1998).

Here, the Respondent argues in its motion that the strike "called by the [International] has been orchestrated, overseen and directed at all times by the [International] and can only be called off by the [International]." The motion provides no basis for finding that the Locals exercised control over the International with respect to the conduct of the strike. Accordingly, in the absence of any showing that the International was acting as the agent of the Locals, we conclude that the Respondent is not entitled to a hearing insofar as it seeks to establish misconduct on the part of the International.

We also conclude that the Respondent is not entitled to a hearing insofar as it seeks to establish that strike misconduct occurring at its other service centers was disseminated to employees at the four locations involved here. The evidence the Respondent seeks to adduce is simply not relevant. The issue before us is not whether the employees at the four locations were coerced by strike misconduct allegedly occurring elsewhere, or by news of misconduct, but whether the strike misconduct allegedly occurring at the four locations where the Unions were certified is the type that justifies withholding a bargaining order. Dissemination of misconduct is insufficient to justify withholding a bargaining order.[5]

Even accepting the Respondent's allegations as true, we find that the strike-related misconduct alleged to have occurred at the Romulus, Bowling Green, Lexington, and Tonawanda service centers is not of such a character as to justify the "extraordinary sanction" of depriving the employees of their elected collective-bargaining representatives and withholding the bargaining orders required to remedy the Respondent's unfair labor practices. Rather, we find that this case falls within the category of union picket line misconduct that the Board has found, with court approval, does not preclude an otherwise appropriate bargaining order. See, e.g., *Great Chinese American Sewing Co*., 227 NLRB 1670, 1671 fn. 6, 1676 fn. 12, 1679 (1977), enfd. 578 F.2d 251, 256 (9th Cir. 1978); *New Fairview,* supra, 206 NLRB at 689, enfd. 520 F.2d at 1320–1323. In so finding, we particularly rely on the fact that the evidence does not show a deliberate plan of violence and intimidation by any of the certified Locals.[6] Indeed, the vast majority of incidents of misconduct are not alleged to have been committed by union officials and occurred during the early period of the strike when no doubt tensions were at their peak. We also rely on the fact that the Locals filed election petitions and established their representational status through the Board's procedures, and thus they have not shown "a total disinterest in enforcing [their] representational rights through the peaceful legal process provided by the Act." *Laura Modes*, supra, 144 NLRB at 1596.

We do not condone picket line violence, and the Board's processes are available (and were in fact utilized by the Respondent) to prevent its recurrence. But we are also reluctant to deprive a substantial group of employees the benefits of collective bargaining because of the misconduct of a relatively few individuals. *New Fairview*, supra, 206 NLRB at 689.[7]

Accordingly, for all these reasons, the Respondent's Motion to Reopen the Record, Remand for Hearing on Teamster Violence and Intimidation and Consolidate with Pending Section 8(b)(1)(A) Cases is denied, and we grant the General Counsel's Motion for Summary Judgment.

[5] Our dissenting colleague cites no authority to support his claim that the Respondent is entitled to a hearing on its "dissemination" theory.

[6] By contrast, in *Allou Distributors*, 201 NLRB 47 (1973), cited by the dissent, the facts showed that the incumbent union "engaged in a deliberate plan of intimidation and violence in order to insure the employees' adherence to the Union." Id. at 48.

[7] Our dissenting colleague does not dispute our findings that the International is not a certified bargaining representative (the Locals are), that the International and the Locals are each separate labor organizations, and that there has been no showing that the International is the agent of any of the Locals. Indeed, he concedes that "agency" is not "the issue."

Without citing any relevant authority, the dissent defines "the issue" as "whether the Locals can secure the benefits of a bargaining order in circumstances where a related entity has engaged in substantial misconduct on their behalf." Under this formulation of "the issue," the Locals apparently had some unknown and undefined duty that they failed to fulfill to the satisfaction of our dissenting colleague. Therefore, he would withhold from the Locals the usual bargaining order remedy for the Respondent's unfair labor practices and would instead direct a hearing to permit the Respondent to adduce evidence of misconduct by a different labor organization (the International).

We decline to follow the dissent down the new trail it blazes. Having shown that the Respondent's contentions are meritless under current law and emphasizing that the elections in issue were held more than 4 years ago, we conclude that the purposes of the Act would be better served by ordering the Respondent to bargain with the certified Locals than by inviting yet further delay while the parties litigate the contours of the dissent's novel theory.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, Overnite Transportation Company, a Virginia corporation, with an office and a place of business in Blaine, Minnesota, and additional facilities located throughout the United States, including Romulus, Michigan; Bowling Green, Kentucky; Lexington, Kentucky; and Tonawanda, New York, has been engaged in the interstate transportation of general commodity freight. During the 12-month period preceding the issuance of the complaint, the Respondent, in conducting its business operations, derived gross revenues in excess of $50,000 for the transportation of freight from the State of Minnesota directly to points outside the State of Minnesota. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the International and its affiliated Locals 89, 299, 375, and 651 are labor organizations within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certifications

1. The Romulus, Michigan unit

Following the election held March 15, 1995, Teamsters Local 299 was certified on August 19, 1999, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

> All full-time and regular part-time drivers, dock workers, mechanics and switchers, employed by the Employer at its facility located at 6150 South Inkster Road, Romulus, Michigan; but excluding all professional employees, confidential secretaries, leadmen, guards and supervisors as defined in the Act.

Teamsters Local 299 continues to be the exclusive representative under Section 9(a) of the Act.

2. The Bowling Green, Kentucky unit

Following the election held February 1, 1996, Teamsters Local 89 was certified on August 2, 1999, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

> Included: All full-time and regular part-time road and city truck drivers, dockworkers, yard drivers, and platform workers employed at the Employer's Bowling Green, Kentucky, facility. Excluded: All office clerical employees, professional employees, dispatchers, guards and supervisors as defined in the Act.

Teamsters Local 89 continues to be the exclusive representative under Section 9(a) of the Act.

3. The Lexington, Kentucky unit

Following the election held April 17, 1996, Teamsters Local 651 was certified on August 11, 1999, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

> All full-time and regular part-time road drivers, city drivers, dock workers, dock leadmen, yard jockeys, line haul employees, maintenance employees and janitors, but excluding all other employees, all office clerical employees, professional employees, guards and supervisors as defined in the Act.

Teamsters Local 651 continues to be the exclusive representative under Section 9(a) of the Act.

4. The Tonawanda, New York unit

Following the election held October 10, 1996, Teamsters Local 375 was certified on July 30, 1999, as the exclusive collective-bargaining representative of the employees in the following appropriate unit:

> All full-time and regular part-time truck drivers, including city drivers and road drivers, all full-time and regular part-time dock workers, including the dock leadmen employed by the Employer at its Tonawanda, New York terminal; excluding: all office clerical employees, sales employees, professional employees, full-time and part-time mechanics, guards and supervisors as defined in the Act, and all other employees.

Teamsters Local 375 continues to be the exclusive representative under Section 9(a) of the Act.

B. Refusals to Bargain

1. The Romulus, Michigan unit

Since at least December 16, 1999, the International, on behalf of Teamsters Local 299, has requested the Respondent to bargain and, since at least December 17, 1999, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

2. The Bowling Green, Kentucky unit

Since at least December 16, 1999, the International, on behalf of Teamsters Local 89, has requested the Respondent to bargain and, since at least December 17, 1999, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

3. The Lexington, Kentucky unit

Since at least December 16, 1999, the International, on behalf of Teamsters Local 651, has requested the Respondent to bargain and, since at least December 17, 1999, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

4. The Tonawanda, New York facility

Since at least December 16, 1999, the International, on behalf of Teamsters Local 375, has requested the Respondent to bargain and, since at least December 17, 1999, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing since at least December 17, 1999, to bargain with Teamsters Local Union Nos. 89, 299, 375, and 651 as the exclusive collective-bargaining representatives of employees in each of the appropriate units, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Unions and, if understandings are reached, to embody those understandings in signed agreements.

To ensure that the employees in each unit are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification in each unit as beginning the date the Respondent begins to bargain in good faith with the Union in that unit. *Mar-Jac Poultry Co*., 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co*., 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondent, Overnite Transportation Company, Blaine, Minnesota, Romulus, Michigan, Bowling Green, Kentucky, Lexington, Kentucky, and Tonawanda, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Teamsters Local Unions Nos. 89, 299, 375, and 651 as the exclusive bargaining representatives of the employees in the bargaining units.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with Teamsters Local 299 as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody that understanding in a signed agreement:

> All full-time and regular part-time drivers, dock workers, mechanics and switchers, employed by the Employer at its facility located at 6150 South Inkster Road, Romulus, Michigan; but excluding all professional employees, confidential secretaries, leadmen, guards and supervisors as defined in the Act.

(b) On request, bargain with Teamsters Local 89 as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody that understanding in a signed agreement:

> Included: All full-time and regular part-time road and city truck drivers, dockworkers, yard drivers, and platform workers employed at the Employer's Bowling Green, Kentucky, facility. Excluded: All office clerical employees, professional employees, dispatchers, guards and supervisors as defined in the Act.

(c) On request, bargain with Teamsters Local 651 as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment, and if an understanding is reached, embody that understanding in a signed agreement:

> All full-time and regular part-time road drivers, city drivers, dock workers, dock leadmen, yard jockeys, line haul employees, maintenance employees and janitors, but excluding all other employees, all office clerical employees, professional employees, guards and supervisors as defined in the Act.

(d) On request, bargain with Teamsters Local 375 as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and if an understanding is reached, embody that understanding in a signed agreement:

> All full-time and regular part-time truck drivers, including city drivers and road drivers, all full-time and regular part-time dock workers, including the dock leadmen employed by the Employer at its Tonawanda, New York terminal; excluding: all office clerical employees,

sales employees, professional employees, full-time and part-time mechanics, guards and supervisors as defined in the Act, and all other employees.

(e) Within 14 days after service by the Region, post at its facilities in Romulus, Michigan, Bowling Green, Kentucky, Lexington, Kentucky, and Tonawanda, New York, copies of the attached notice marked "Appendix."[8] Copies of the notice, on forms provided by the Regional Director for Region 18 after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since December 17, 1999.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

MEMBER HURTGEN, dissenting.

I would grant the Respondent a hearing with respect to its *Laura Modes*[1] contentions.

Respondent argues that a hearing is necessary and appropriate to deal with its *Laura Modes* defense to the refusal to bargain in the four units. My colleagues deny a hearing. I disagree. In doing so, I do not say that a *Laura Modes* defense has been established. I simply say that I would grant a hearing. Only after the relevant facts are adduced would I decide the *Laura Modes* issue.

In denying a hearing, my colleagues assume arguendo that the International Union has "orchestrated, overseen and directed" misconduct associated with the strike and picketing.[2] However, my colleagues note that *the Locals* are the certified representatives, and thus the Locals would be the beneficiaries of bargaining orders. My colleagues then assert that the Locals are not responsible for International misconduct, i.e., the International is not their agent. In this regard, they note that the Locals exercised no control over the International.

In my view, the issue is not simply one of agency. That is, the issue is not whether the Locals can be held responsible for any Section 8(b)(1)(A) misconduct by the International. Rather, the issue is whether the Locals can secure the benefits of a bargaining order in circumstances where a related entity has engaged in substantial misconduct on their behalf. In resolving this issue, I note that the International called the strike on behalf of the Locals, i.e., to help them achieve representative status. In connection with that strike, the International has orchestrated and directed violence to assist the Locals in achieving their goal.[3] It would appear that the Locals were aware of this conduct. In this regard, I note that the International misconduct was extensive and widespread, and it was done on behalf of the Locals' effort to become the representative. In these circumstances, it would strain credulity to believe that the Locals were wholly unaware of the misconduct.[4]

Contrary to the suggestion of my colleagues, I am not blazing a new trail. There are numerous examples of situations where a certification of a union or a certification of a union loss is precluded because of the conduct of a nonagent. See *Kelsey-Hayes*, 145 NLRB 1717 (conduct of mayor of city); *Myrna Mills,* 133 NLRB 767 (conduct of citizen committee); *Westwood*, 270 NLRB 802 (conduct of employees).

I recognize that the cases cited above involve misconduct during the critical period before an election. The instant case involves postelection misconduct. My colleagues seize upon this difference and say that the instant misconduct can be ignored. I disagree. In both situations, the Board is rightfully insistent that the peaceful processes of the Act be used to resolve representational disputes. If violent misconduct occurs during the critical period before an election, the Board will set aside that election. But the doctrine is not confined to that time period. Even after a union has become the bargaining representative, and the employer unlawfully declines recognition, the Board will decline to grant a bargaining order if peaceful legal processes have not been used.[5]

[8] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

[1] 144 NLRB 1592.

[2] I express no view as to the ultimate merit of these allegations. Rather, like my colleagues, I assume arguendo that the allegations are correct. This is the appropriate course where, as here, my colleagues are denying a hearing.

[3] In addition to the above, there are allegations that the Locals themselves engaged in misconduct. See Case 7–CB–12240(2) in regard to Local 299; Case 3–CB–7599 in regard to Local 375; Case 9–CB–10142–2 in regard to Local 651. As with other allegations, I will assume arguendo that they are true. See fn. 2 supra.

[4] At the very least, a hearing is required on the issue of knowledge.

[5] *Allou Distributors*, 201 NLRB 47 (1973).

My colleagues also assert that the standard for denying a bargaining order under *Laura Modes* is "considerably higher" than the standard for setting aside an election based on third party conduct (atmosphere of fear and reprisal). They cite no case for this proposition, and I would question its validity. However, even if that proposition is true, there is a need for a hearing to determine whether that high standard has been met in this case.

With respect to the amount of 8(b)(1)(A) misconduct, contrary to the suggestion of my colleagues, I do not concede that there was insufficient misconduct at the four locations to warrant the denial of a bargaining order. This issue should be resolved at a hearing. Nor do I concede that employees at the four locations were wholly unaware of the misconduct elsewhere. Again, this matter should be resolved at a hearing.

My colleagues assert that the Locals relied upon the election mechanism to achieve representational status. In my view, if the Locals had relied solely on this mechanism, there would be no problem in granting the bargaining order. However, there are allegations here that the Locals have not been content to rely solely on this mechanism. If a hearing develops evidence that would support these contentions, it would be clear that the Locals have not been content to rely upon the peaceful procedures provided by the Act and by this Board.

Finally, my colleagues say that most of the misconduct occurred during the early period of the strike. To the extent that this is true, that may militate against a *Laura Modes* defense. It does not militate against a hearing.

Based on the above, I would not deny Respondent the opportunity to adduce the relevant evidence.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with Teamsters Local Union Nos. 89, 299, 375, and 651, as the exclusive representatives of the employees in the bargaining units.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with Teamsters Local 299 and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the following bargaining unit:

> All full-time and regular part-time drivers, dock workers, mechanics and switchers, employed by us at our facility located at 6150 South Inkster Road, Romulus, Michigan; but excluding all professional employees, confidential secretaries, leadmen, guards and supervisors as defined in the Act.

WE WILL, on request, bargain with Teamsters Local 89 and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the following bargaining unit:

> Included: All full-time and regular part-time road and city truck drivers, dockworkers, yard drivers, and platform workers employed at our Bowling Green, Kentucky, facility. Excluded: All office clerical employees, professional employees, dispatchers, guards and supervisors as defined in the Act.

WE WILL, on request, bargain with Teamsters Local 651 and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the following bargaining unit:

> All full-time and regular part-time road drivers, city drivers, dock workers, dock leadmen, yard jockeys, line haul employees, maintenance employees and janitors, but excluding all other employees, all office clerical employees, professional employees, guards and supervisors as defined in the Act.

WE WILL, on request, bargain with Teamsters Local 375 and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the following bargaining unit:

> All full-time and regular part-time truck drivers, including city drivers and road drivers, all full-time and regular part-time dock workers, including the dock leadmen employed by us at our Tonawanda, New York terminal; excluding: all office clerical employees, sales employees, professional employees, full-time and part-time mechanics, guards and supervisors as defined in the Act, and all other employees.

OVERNITE TRANSPORTATION COMPANY